



Rohingya tangled in Burma citizenship politics

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Burma is a multi-cultural society with multi-ethnicities. During its independence a feeling of awareness for an ethnic togetherness and comprehensive identity to form joint feelings for tranquility and safety developed. On the basis of the agreed upon principle of 'unity in diversity', articulated by the father of the nation General Aung San, the 'Union of Burma' came to existence on January 4, 1948.

Burma is a country where various streamlets of culture and civilization join together. In a pluralistic society like Burma there must be a joint life on the diversity of cultures. But due to racism and racial discrimination, the culture of Burman majority is assumed as the national culture and on its margins, there are small cultures of the numerous ethnic groups and are assumed as non-national or inferior cultures. Regrettably, today Rohingyas are considered practising foreign way of life having no origin in Burma, despite the fact that the heyday of independent Arakan began with the Muslim civilization, which reached its zenith during the most glorious period of Mrauk-U, "the creation of a remarkably hybrid Buddhist-Islamic court, fusing tradition from Persia and India as well as the Buddhist Worlds to the east." ¹ On top of that "Arakan was virtually ruled by Muslims from 1430 to 1531." ²

'Rohingya problem' started in Burma from British colonial period onwards. There were violent anti-Indian (including anti-Muslim) riots in 1930-31 and again in 1938 in which several hundreds Indians and Muslims were killed in Burma. Muslim properties: shops, houses and mosques were looted, destroyed and burned under the campaign of 'Burma for Burmese only'. Similar anti-Muslim sentiment blew up in Arakan too. In April 1942, armed Rakhine in connivance with Burmese nationalists carried out a pogrom in Akyab district and massacred about 100,000 unarmed Muslims. Bulk of the Muslims was internally displaced, and nearly 50,000 of them took refuge in the British held territories of Chittagong and Rangpur. The resultant damages were enormous causing serious demographic changes in North Arakan. The Muslim population in the alluvial Kaladan and Lemro deltas were depopulated to be populated by Buddhists. The hard-nosed hate mongers in Arakan have continued the hostility signing the mantra of Rohingya extermination. Martin Smith observes:

"In Arakan itself, there is little evidence of such communal flare-ups but as a result of these experiences, many Burmese nationalists and politicians have never really bothered to distinguish between Indians or Muslims in general and the indigenous Muslims of Arakan. The word commonly used to describe Muslims in Arakan is the pejorative word "Kala" or foreigner, which is exactly the same word commonly used to describe Muslims or Indians anywhere else they live in Burma (anti-Muslim prejudice is not just confined to Arakan today)." ³

The successive Burmese governments have had pursued policies of exclusion and persecution against Rohingyas while some hardhearted Rakhine academic and politicians are engaged in racist and xenophobic plans to marginalize and exterminate them. With preoccupation of 'Muslim phobia' the former dictator Ne Win promulgated an oppressive Burma Citizenship law in 1982 in order to deprive the Rohingyas of their time-honored citizenship and ethnic rights in Burma.

Despite some recent reforms towards democratization, civilianized military government of U Thein Sein has so far no change of attitude towards Rohingya and has created hostile climate in North Arakan. The government

continues to treat them as aliens using this oppressive nationality law in a random manner. While the authorities and xenophobes reject or exclude Rohingyas, nevertheless their distinct South Asian physical feature, language and frontier civilization are a true manifestation of the ancient people of Indian Bengali Chandra dynasty in Arakan. Conversely, the Rakhines and no-one else are treated as natives of Arakan for being Buddhists in shared characteristics with the majority Burman, speaking an archaic form of Burmese. This favourable reception of 'Rakhine only policy' is a threat of Buddhistization through assimilation.

In the situation of Rohingya, the 1982 citizenship law promotes Burmanization or Rakhinization aims at exterminating the Rohingya population from Arakan. Let us examine this unjust nationality law.

Nationality:

Citizenship is same as nationality but the Burmese law uses the expression of citizenship and not nationality. Nationality is often described as the connecting link between the individual and international law. Nationality indicates the status of belonging to a particular state. Nationality or citizenship is the social and legal link between individuals and their democratic political community. By virtue of this, an individual may be entitled to certain benefits and obligations under municipal and international law. There is no accepted definition of nationality. As a general rule each state is free to define who its nationals are though this description can be circumscribed by specific treaties (eg Treaties concerning the elimination of statelessness). Thus article 1 of the 1930 Hague Convention on the Conflict of Nationality Laws stated that:

“....it is for each state to determine under its own law who are the nationals. This law shall be recognized by other states in so far as it is consistent with international conventions, international custom and principles of law generally recognized with regard to nationality. “

Thus, the nationality law of a state is required to conform to international law, international human rights law, international conventions, customs and practices. The most important of these principles concerning acquisition of nationality are first, descent from parents who are nationals (*jus sanguinis*) and secondly, the territorial location of birth (*jus soli*). Nationality may also be acquired by marriage, adoption, legalization, naturalization (the proceeding whereby a foreigner is granted citizenship) or as a result of transfer of territory from one state to another. It should be noted that since international law recognizes the primacy of the state in this regard, the practice of acquiring nationality varies considerably.

The 1982 Citizenship Law:

Burma Citizenship Law of 1982 was the most restrictive citizenship law in the world promulgated by late dictator Ne Win's BSPP (Burma Socialist Programme Party) regime on October 15, 1982. Unlike 1948 Citizenship Act, the 1982 law is essentially the principle of *jus sanguinis* and has repealed the Union Citizenship (Election) Act, 1948, and the Union Citizenship Act, 1948. Based on how one's forebears obtained citizenship, Ne Win stratified citizenship into three status groups: full, associate and naturalized.

Full citizens are those belonging to one of the so-called 135 'national races', who lived in Burma prior to 1823 - just prior to the conquest of parts of lower Burma (Arakan and Tenasserim) by the British, or were born to parents who were citizens at the time of birth. Associate citizenship was only granted to those whose application for citizenship under the 1948 Act was pending on the date the Act came into force. Thus, the associate citizens are those who acquired citizenship through the 1948 Union Citizenship Law. Naturalized citizenship could only be granted to those who could furnish "conclusive evidence" of entry and residence before Burma's independence on 4 January 1948, who could speak one of the national languages well and whose children were born in Burma. Thus, naturalized citizens refer to persons who lived in Burma before independence and applied for citizenship after 1982. Foreigners cannot become naturalized citizens unless they can prove a close familial connection to the country.

It is worthy of mention that the previous parliamentary government listed 144 ethnic groups in Burma. But Ne Win put only 135 groups on a short list, and then was approved by his BSPP regime's constitution of 1974. The three Muslim groups of Rohingya (Muslim Arakanese), Panthay (Chinese Muslims), Bashu (Malay Muslims) and six other ethnic groups were deleted. It was an injustice founded on religious rancour and racial prejudice towards Muslims and smaller non-Burman groups, particularly against the Rohingya, who are not a manageable minority. Even the so called 135 ethnic groups are highly divisive splitting some of the national races into so many groupings. However, this creation of the military is unjustified.

Generally, the 1982 citizenship law deprives most people of Indian and Chinese descent of citizenship. "However, the timing of its promulgation shortly after the refugee repatriation (from Bangladesh) of 1979, strongly suggests that it was specifically designed to exclude the Rohingya"⁴ who had previously been recognized as citizens as well as a national race of Burma. According to Ne Win, "racially, only pure-blooded nationals will be called citizens."⁵ Shockingly, the Rakhine academic late Dr. Aye Kyaw was instrumental to the making of this discriminatory racist law under infamous Ne Win. He proudly claimed to have devised a mechanism to denationalize the Rohingya people.

The Rohingya are in a situation of permanent limbo. Burmese government recognizes them as neither citizens nor foreigners. But it has deliberately declared them non-nationals describing them as 'illegal immigrants' from Bangladesh' while accepting them all at once as 'Burmese residents', which is not a legal status. Thus "the law made the Rohingya ethnic group a stateless one in the country, where they have been living for generation."⁶

"In 1998, in a letter to UNHCR, Burma's then Prime Minister General Khin Nyunt wrote: These people are not originally from Myanmar but have illegally migrated to Myanmar because of population pressures in their own country"⁷ In February 1996, U.N. Special Rapporteur on Burma Professor Yozu Yokota quoted Lt. Gen. Mya Thinn, the then Home Minister (of SPDC) as saying "Muslim population of Rakhine (Arakan) State was not recognized as citizens of Myanmar under the existing naturalization regulations and they were not even registered as so-called foreign residents ...Their status situation did not permit them to travel in the country...They are also not allowed to serve in the state positions and are barred from attending higher educational institution." The government authorities and xenophobes time and again stated that "there is no race by the name of Rohingya".

Now the term 'Rohingya' was stamped out from the list of Burma's national races; and Rohingya language features to be non-national. On the other hand, a few Rohingya could speak the languages that the military regime recognized, and very few Rohingyas could fulfil these requirements. Whether one is citizen or not is to be decided by the single authoritarian body, Council of State not the court. "Moreover, the wide powers assigned to a government-controlled 'Central Body' to decide on matters pertaining to citizenship mean that, in practice, the Rohingyas' entitlement to citizenship will not be recognized."⁸

Rohingyas were not issued identity cards since 1970s. In 1989, colour-coded Citizens Scrutiny Cards (CRCs) were introduced: pink cards for the full citizens, blue for associate citizens and green for naturalized citizens. Rohingya were not issued with any identity cards which are very essentials in all their activities. "In 1995, in response to UNHCR's intensive advocacy efforts to document the Rohingyas, the Burmese authorities started issuing them with Temporary Registration Card (TRC), a white card, pursuant to the 1949 Residents of Burma Registration Act. The TRC does not mention the bearer's place of birth and cannot be used to claim citizenship. The family list, which every family residing in Burma possesses, only records family members and their date of birth. It does not indicate the place of birth and therefore provides no official evidence of birth in Burma - and so perpetuate their statelessness."⁹ By just sanguinis rule and any accepted citizenship concepts, the Rohingya have to be issued no documents other than full citizenship cards. As a matter of fact, such issuance of white cards, many believe, has an adverse effect on their status.

1982 Citizenship Law violates the terms of international law

1982 citizenship law violates several fundamental principles of international customary law standards, offends the Universal Declaration of Human Rights and leaves Rohingyas exposed to no legal protection of their rights. The law has perpetuated the Rohingya citizenship crisis making them object of persecution and of discrimination which render them a very difficult life as stateless people in their native country, where they have absolute rights to be on an equal footing with all other citizens. Such persecution and discrimination constitute them a total disregard of the most elementary humanitarian principles and was contrary to the purposes of the United Nations. Burma, as an UN member state has obligation to follow the UN resolutions. One of such resolution unanimously adopted at 48th plenary meeting of the General Assembly reads: “The General Assembly declares that it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination, and calls on the Governments and responsible authorities to conform both to the letter and spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to the end.” ¹⁰

In addition, the 1982 Citizenship Law offends, inter alia, the following laws of humanity:

Article 15 of the Universal Declaration of Human Rights (UDHR) which states that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”. But the “citizenship law declared the Rohingyas as ‘non-nationals’ or ‘foreign residents’¹¹ rendering them ‘stateless’ in their own homeland, where they have been living for generations with a long history.

It is conflicting government’s obligation to fulfil the rights of the child as stipulated by Article 7(1) of the UN Convention on the Rights of the Child, 1989 which states that the Child shall be registered immediately after birth and shall have the right to a name, and to acquire a nationality. The Burmese government ratified this convention in 1991 and is obliged to grant citizenship to Rohingyas.

Article 24(3) of the UN International Covenant on Civil and Political Rights 1966 also states, “Every child has the right to acquire a nationality.” But most Rohingya children were denied registration and recently more than 40,000 Rohingya children have been blacklisted reasoning that their parents had not married with official permission. “Under Myanmar’s 1982 citizenship law, Rohingya children - both registered and unregistered - are stateless and hence, face limited access to food and healthcare, leaving them susceptible to preventable diseases and malnutrition. Many are prevented from attending school and used for forced labour, contributing to a Rohingya illiteracy rate of 80 percent. More than 60 percent of children aged between five and 17 have never enrolled in school” . ¹²

Article 9 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 states: (a) States Parties shall grant women equal rights with men to acquire, change or retain their nationality... (b) States Parties shall grant women equal rights with men with respect to the nationality of their children. Burmese government ratified this convention on 22 July 1997. But Rohingya women and their children have been deprived of their Burmese nationality forcing them to live in servitude as stateless within Burma and refugees beyond its border -- wondering from place to place -- with ultimate aim of destroying this minority community.

Article 5(d) (iii) of the UN Convention on the Elimination of All Forms of Racial Discrimination 1965 which states that States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law...[and to] the enjoyment of ...the right to nationality. But the Rohingyas are discriminated against and exterminated from their ancestral homeland on ground of ethnicity and religion. They have been subjected to ‘systematic racism’.

The law promotes discrimination against Rohingya and arbitrary deprivation of their Burmese citizenship. The deprivation of one's nationality is not only a serious violation of human rights but also an international crime. The law does not oblige the state to protect stateless persons (i.e. victims of a serious human rights violation), thus largely ignoring state's 'obligation to respect the right to nationality'.

The law continues to create outflows of refugees, which overburden other countries posing threats to peace and tranquillity within the region. An estimated 1.5 million Rohingya diasporas are in Bangladesh, India, Pakistan, UAE, KSA, Thailand, Malaysia, Indonesia, USA, UK, Republic of Ireland Europe, Australia, New Zealand and Japan etc. The Rohingya refugee issue with their boat people crisis has become a regional problem with international dimension.

In his report to the United Nations Prof. Yokota states: "The 1982 Citizenship Law should be revised or amended to abolish its over burdensome requirements for citizens in a manner which has discriminatory effects on racial or ethnic minorities particularly the Rakhine (Arakan) Muslims. It should be brought in line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961."

Citizenship concepts in Burma and the Rohingyas

The Nu-Attlee Agreement (Treaty between the Government of the United Kingdom and the Provincial Government of Burma, 1947) was very important as to the determination of the nationality status of the peoples and races in Burma. Article 3 of the Agreement states:

"Any person who at the date of the coming into force of the present Treaty is, by virtue of the Constitution of the Union of Burma, a citizen thereof and who is, or by virtue of a subsequent election is deemed to be, also a British subject, may make a declaration of alienage in the manner prescribed by the law of the Union, and thereupon shall cease to be a citizen of the Union.

The Section 10 of the 1947 Constitution of the Union of Burma states "there shall be but only one citizenship throughout the Union; that is to say, there shall be no citizenship of the unit as distinct from the citizenship of the Union."

Citizens, as defined by the 1947 Constitution, are persons who belong to an "indigenous race", have a grandparent from an "indigenous race", are children of citizens, or lived in British Burma prior to 1942. Under this law, citizens are required to obtain a National Registration Card (NRC), while non-citizens are given a Foreign Registration Certificate (FRC). Citizens whose parents hold FRCs are not allowed to run for public office.

Who are indigenous races was defined in Article 3 (1) of the Burma Citizenship Law 1948, which states: "For the purposes of section 11 of the Constitution the expression any of the indigenous races of Burma shall mean the Arakanese, Burmese, Chin, Kachin, Karen, Kayah, Mon or Shan race and such racial group as has settled in any of the territories included within the Union as their permanent home from a period anterior to 1823 A. D. (1185 B.E.). These two categories of people and those descended from them are automatic citizens. They did not require applying to court for naturalization. Rohingyas are for all intent and purposes Arakanese and they are also a racial group who had settled in Arakan/Union of Burma as their permanent home from a period anterior to 1823 A. D. (1185 B.E.).

Therefore, the parliamentary government (1948-1962) had officially declared Rohingyas as one of the indigenous ethnic groups of Burma. The declaration reads: "The people living in Maungdaw and Buthidaung regions are our national brethren. They are called Rohingyas. They are on the same par in status of nationality with Kachin, Kayah, Karen, Mon, Rakhine and Shan. They are one of the ethnic races of Burma." ¹³

But Article 3 of the 1982 Burma Citizenship Law defines indigenous ethnic groups (Taing-Yin-Tha) stating "Nationals such as the Kachin, Karen, Chin, Burma, Mon, Rakhine or Shan and ethnic groups as have settled in

any of the territories included within the States as their permanent home from a period anterior to 1185 B.E., 1823 A.D” are Burma citizens. Here the word ‘Rakhine’ replaced the word ‘Arakanese’ and is designedly attributed to the Buddhist Arakanese at the exclusion of the Muslim Rohingya Arakanese.

Unlike 1947 Constitution and 1948 Citizenship Law, 1982 Citizenship Law established three-tiered system of citizenship (full, associate and naturalized), which is actually more a question of categorisation and discrimination, and is an instrument of oppression against Rohingyas and so-called non-indigenous racial groups. The category of associate citizenship should be abolished as it tends to create high class citizens and low-class citizens within a nation. In conformity with the generally accepted citizenship concept, associate citizenship should be abolished. All citizens whether full citizens or naturalized citizens should be constitutionally treated as equal in dignity and rights. No special privileges should be granted to any individuals or groups on grounds of ethnicity and religion.

Article 44 (c) states an applicant for naturalized citizenship shall have “to be able to speak well one of the national languages.” These clauses pose very much oppressive tool towards anyone to denationalize the marginalized groups like Rohingya and to generate a lot of IDPs and refugees and it should be permanently deleted. Burma is an ethnically diverse country. There are people particularly those living in remote areas or isolated places of the country have no knowledge of Burmese nor are unable to speak well one of the so-called indigenous languages. In the case of Hasan Ali and Meher Ali ¹⁴ their Lordships of the Supreme Court observed: “Today in various parts of Burma there are people who, because of their origin and isolated way of life, are totally unlike the Burmese in appearance or speak of events which has occurred outside the limits of their habitation, They are nevertheless statutory citizens under the Union Citizenship Act (1948)...Thus mere race or appearance of a person or whether he has a knowledge of language of the Union is not the test as to whether he is a citizen of the Union.”

Article 71 of the 1982 law states “Organisations conferred with authority under this law shall give no reasons in matters carried out under this law”. It is not at all compatible with democracy and human rights. It should be scrapped for good. Every action should be answerable to law and constitution.

Rohingya were never legally treated as aliens

Rohingyas were not subjected to any laws related to Registration of Foreigners before or after Burma’s independence such as the Foreigner Act (Indian Act III, 1846), the Registration of Foreigners Act (Burma Act VII, 1940) and the Registration of Foreigners Rules, 1948. During colonial administration Rohingya representatives were elected from North Arakan as Burmese nationals from national quotas. In 1946, as an indigenous people, General Aung San assured full rights and privileges to Muslim Rohingya Arakanese saying “I give (offer) you a blank cheque. We will live together and die together. Demand what you want. I will do my best to fulfil them. If native people are divided, it will be difficult to achieve independence for Burma.”¹⁵

Rohingya exercised the right of franchise (the right of citizenship and the right to vote) in all elections held in Burma from British colonial rule up to the present such as, 91 Department Administration election (1936), Aung San’s Constituent Assembly election (1947), all elections during parliamentary rule (1952, 1956, 1960), Ne Win’s BSPP (Burma Socialist Programme Party) constitutional referendum and election (1974) and SLORC military multiparty election (1990), military SPDC’s constitutional referendum (2008) and its multi-party election (2010).

In post independence, during parliamentary rule, the Burmese government issued two kinds of Identity Cards: -- National Registration Cards (NRCs) to all Burmese residents and Foreigner’s Registration Certificates (FRCs) to all registered foreigners. As a matter of fact, as there was no citizenship certificate/card then, the NRC was the only ID generally used as a proof of one’s citizenship in Burma. NRC was first issued in 1952 starting from Maungdaw Township, where 96% population, at that time, was Rohingya. These NRCs are the same IDs issued to Rakhine and all other ethnic groups and citizens in the country. Under state programme, the immigration and

national registration teams went around the villages, checked the family lists and took photographs of the inmates for the purpose of issuing NRCs. It was a bona fide document that allowed one to carry on all his national activities, without let or hindrance: -- to possess moveable and immovable or landed properties, pursue education, including higher studies and professional courses in the country's seats of learning, right to work and public services, including armed forces, and to obtain Burmese passport for travelling abroad, including pilgrimage to Holy Makkah. Like all other NRC holders, the Rohingya enjoyed all basic rights and privileges although serious discrimination existed since 1962 military takeover.

What citizenship status do the Rohingya have in Burma?

The Rohingya are sons of the soil of Arakan/Burma cannot be overruled. Yet the government with xenophobes are denying Rohingya's existence in Burma. They used to say that "there were no people existed in Burma by the name of Rohingya; the word Rohingya was not in the history, the word Rohingya was never heard of... etc.etc". It is a blatant lie and is a shame because the critics know that they are lying perfidiously. With hatred against this people, they may instead say that "there was Rohingya, recognized by the Burmese parliamentary government as an ethnic group on par with other ethnic nationalities of the country; but now we reject them to be a part of us simply because we don't like them for their physical feature, language, culture and religion." They are blind to see and are ostriches to face reality and recognise the truth. Following are some of the realities:

The word 'Rohingya' was not coined but a historical name for the Muslim Arakanese. There is still Muslim village in Akayab (Sittwe) city by the name of Rohingya para. The word was conspicuous in various annals and is in the pages of history. "It can be asserted, however, that one claim of the Buddhist school in Rakhaing historiography, that Rohingya was an invention of the colonial period, is contradicted by the evidence." ¹⁶

Rohingyas were an integral part of the Mrauk U Empire before Burman occupation of it in 1784. They were kingmakers who virtually ruled Arakan with sublime civilization.

During British colonial period part of their traditional homeland was recognized as '*Muslim Area of North Arakan*'.

In 1946, General Aung San assured them rights and freedom on par with other people of the country as natives of Arakan as well as one of the indigenous nationalities of Burma.

Under Article 3 of the Aung San-Attlee Treaty (1947) and the First Schedule to the Burma Independence Act 1947, the Rohingya are citizens of the Union of Burma. They are also one of the indigenous races of the country under Section 11 (1) (II) and (III) of the 1947 Constitution.

The parliamentary government (1948-1962) had recognized 'Rohingya' as one of the indigenous ethnic nationalities of Burma.

Giving special significance on the indigenous status of Rohingya, the former first President of Burma Sao Shwe Theik stated, "Muslims of Arakan certainly belong to one of the indigenous races of Burma. If they do not belong to the indigenous races, we also cannot be taken as indigenous races." ¹⁷

Rohingya were never legally treated as foreigners by the British colonial administration and all governments that ruled Burma from independence in 1948, in various shape and manifestation. They duly exercised the right of franchise in all elections held in Burma and voted their representatives to legislative bodies or parliaments and various levels of administrative councils. There were Rohingya MPs. Minister, parliamentary secretaries, professionals, doctors, engineers, lawyers, academics, civil and military officers, and others who run for public office. It is noteworthy that citizens whose parents hold FRCs are not allowed to run for public office.

The above are some of the many facts which bear witness that Rohingyas are an integral part of Burma's society, and are bona fide citizens like any other recognized ethnic groups or national races of the country. Rohingya issue

is not a question of 'illegal immigration' that the government with the vested interests is pretending and trying to hoodwink the international opinion to justify Rohingya persecution. It is a case of intolerance deeply entrenched in 'systematic racism' and preoccupation of the 'Muslim phobia'. The only solution for their due accommodation in the family of the Union of Burma solely rests on the will of the ruling government.

Last not least, arbitrary deprivation of Rohingya's citizenship is an international crime. Nonetheless, the Rohingya problem is first and foremost to be resolved within Burma that requires effective international pressure. Again, in the face of the exhaustion of all domestic remedies the international community is the only hope for the restoration of their citizenship with collective rights. It will be sagacity on the part of the ruling government to response to the outcry of Rohingya and international reaction without delay.

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